

AMENDED IN ASSEMBLY JUNE 24, 2010
AMENDED IN ASSEMBLY AUGUST 20, 2009
AMENDED IN ASSEMBLY JULY 15, 2009
AMENDED IN ASSEMBLY JULY 8, 2009
AMENDED IN ASSEMBLY JUNE 23, 2009
AMENDED IN SENATE MAY 20, 2009
AMENDED IN SENATE APRIL 27, 2009

SENATE BILL

No. 660

Introduced by Senator Wolk

February 27, 2009

An act to ~~amend Section 1923.5 of, and to add Section 1923.1 to, to~~ the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as amended, Wolk. Reverse mortgages.

Existing law defines and regulates reverse mortgage loans ~~and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement. Existing law requires a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees, and prohibits a lender from accepting a final and complete reverse mortgage application without first receiving from the applicant, or his or her~~

representative, a certification that the applicant has received loan counseling.

This bill would provide that a lender, broker, person, or entity that recommends the purchase of a reverse mortgage in anticipation of financial gain owes the prospective borrower a duty of honesty, good faith, and fair dealing, *as defined. This bill would provide that a person or entity shall not attempt to avoid the application of these provisions, as specified.* ~~The bill would prohibit a lender, broker, person, or entity from being deemed to have breached this duty solely based on the actions or omissions of the counseling agency. The bill would revise the disclosure notice provided to reverse mortgage applicants and would prohibit a lender from accepting a reverse mortgage loan application unless the lender provides the prospective borrower, prior to his or her meeting with the counseling agency, with a specified written checklist that conspicuously alerts the prospective borrower of subjects that he or she should discuss with the loan counselor or, if the borrower seeks counseling prior to requesting a reverse mortgage loan application, the bill would require a mortgage counselor to provide the checklist. This bill would require that the counselor and the prospective borrower sign the checklist and return it to the lender. The bill would prohibit approval of the loan application until the signed checklist is provided to the lender. The bill would require that a copy of the checklist be provided to the borrower.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1923.1 is added to the Civil Code, to read:
- 2 1923.1. (a) Any person or entity that recommends the purchase
- 3 of a reverse mortgage for compensation or in expectation of
- 4 compensation, paid directly or indirectly, owes the prospective
- 5 borrower a duty of honesty, good faith, and fair dealing.
- 6 (b) For purposes of this section, “the duty of honesty, good
- 7 faith, and fair dealing” shall mean and include an obligation to
- 8 not do any of the following:
- 9 (1) Make, or cause to be made, any false, deceptive, or
- 10 misleading statement, representation, or omission in connection
- 11 with a reverse mortgage.

1 (2) *Originate a reverse mortgage transaction or assess any fees*
2 *upon a prospective applicant by use of undue influence, as defined*
3 *in Section 1575.*

4 (3) *Originate a reverse mortgage transaction for a wrongful*
5 *purpose. A person or entity shall be deemed to have originated a*
6 *reverse mortgage transaction for a wrongful purpose if the person*
7 *or entity originated the reverse mortgage with respect to a*
8 *consumer and knew or should have known that the reverse*
9 *mortgage was likely to be harmful to the consumer.*

10 (4) *Originate a reverse mortgage transaction, or assess any fee*
11 *upon a prospective applicant, when the person or entity knows or*
12 *should know that the applicant lacks capacity pursuant to Section*
13 *812 of the Probate Code, or is of unsound mind, but not entirely*
14 *without understanding, pursuant to Section 39.*

15 (5) *Originate a reverse mortgage transaction when the person*
16 *or entity knows or should know that the reverse mortgage will be*
17 *used as a tool of financial abuse of an elder as defined in Section*
18 *15610.30 of the Welfare and Institutions Code.*

19 (6) *Offer, recommend, or provide a reverse mortgage that*
20 *violates any provision of Section 1923.2 or 1923.5.*

21 (c) *A person or entity shall not attempt to avoid the application*
22 *of this division by doing any of the following:*

23 (1) *Dividing any reverse mortgage transaction into separate*
24 *parts for the purpose and with the intent of evading the provisions*
25 *of this section, including, but not limited to, using the proceeds of*
26 *the reverse mortgage to fund an annuity, insurance, or investment*
27 *product within one year from origination of the reverse mortgage.*

28 (2) *Any other subterfuge.*

29 (d) *The duties set forth in this section shall not be construed to*
30 *limit or narrow any other duty of a lender, broker, person, or*
31 *entity, including, but not limited to, the duties set forth in Section*
32 *2923.1 and Division 1.9 (commencing with Section 4995) of the*
33 *Financial Code.*

34 ~~SECTION 1. Section 1923.1 is added to the Civil Code, to~~
35 ~~read:~~

36 ~~1923.1. (a) Any lender, broker, person, or entity who~~
37 ~~recommends the purchase of a reverse mortgage in anticipation of~~
38 ~~financial gain owes the prospective borrower a duty of honesty,~~
39 ~~good faith, and fair dealing. The duties set forth in this section~~
40 ~~shall not be construed to limit or narrow any other duty of a lender,~~

1 broker, person, or entity. Compliance with this chapter and all
2 other applicable law may be cited as evidence demonstrating
3 compliance with the duties of this subdivision.

4 (b) A lender, broker, person, or entity shall not be deemed to
5 have breached the duty set forth in subdivision (a) based solely on
6 the actions or omissions of the counseling agency pursuant to this
7 chapter.

8 SEC. 2. Section 1923.5 of the Civil Code is amended to read:

9 1923.5. (a) No reverse mortgage loan application shall be
10 taken by a lender unless the loan applicant, prior to receiving
11 counseling, has received from the lender the following plain
12 language statement in conspicuous 16-point type or larger, advising
13 the prospective borrower about counseling prior to obtaining the
14 reverse mortgage loan:

15 —

16
17 **IMPORTANT NOTICE**
18 **TO REVERSE MORTGAGE LOAN APPLICANT**
19

20 ~~A REVERSE MORTGAGE IS A COMPLEX FINANCIAL~~
21 ~~TRANSACTION. IF YOU DECIDE TO OBTAIN A REVERSE~~
22 ~~MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL~~
23 ~~DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND~~
24 ~~FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.~~
25 ~~IT IS THEREFORE IMPORTANT TO UNDERSTAND THE~~
26 ~~TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT.~~
27 ~~BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE~~
28 ~~REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN~~
29 ~~COUNSELOR. A LIST OF APPROVED COUNSELORS WILL~~
30 ~~BE PROVIDED TO YOU BY THE LENDER.~~

31 ~~SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST~~
32 ~~USING THE PROCEEDS OF A REVERSE MORTGAGE TO~~
33 ~~PURCHASE AN ANNUITY OR RELATED FINANCIAL~~
34 ~~PRODUCTS. IF YOU ARE CONSIDERING USING YOUR~~
35 ~~PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS~~
36 ~~THE FINANCIAL IMPLICATIONS OF DOING SO WITH~~
37 ~~YOUR COUNSELOR AND FAMILY MEMBERS.~~

38 —

39 (b) (1) In addition to the plain statement notice described in
40 subdivision (a), no reverse mortgage loan application shall be taken

1 by a lender unless the lender provides the prospective borrower,
2 prior to his or her meeting with a counseling agency on reverse
3 mortgages, with a written checklist, or in the event that the
4 prospective borrower seeks counseling prior to requesting a reverse
5 mortgage loan application from the reverse mortgage lender, the
6 counseling agency shall provide the prospective borrower with a
7 written checklist. The written checklist shall conspicuously alert
8 the prospective borrower, in 12-point type or larger, that he or she
9 should discuss with the agency counselor the following issues:

10 (A) How unexpected medical or other events that cause the
11 prospective borrower to move out of the home earlier than
12 anticipated will impact the total loan cost.

13 (B) The extent to which the prospective borrower's financial
14 needs would be better met by options other than a reverse
15 mortgage, including, but not limited to, less costly home equity
16 lines of credit, property tax deferral programs, or governmental
17 aid programs.

18 (C) Whether the prospective borrower intends to use the
19 proceeds of the reverse mortgage to purchase an annuity or other
20 insurance products and the consequences of doing so.

21 (D) The effect of repayment of, or inability to repay, the loan
22 on residents who are not borrowers after all borrowers have died
23 or permanently left the home.

24 (E) The prospective borrower's ability to finance routine or
25 catastrophic home repairs, especially if maintenance is a factor
26 that may determine when the mortgage becomes payable.

27 (F) The impact that the reverse mortgage may have on the
28 prospective borrower's tax obligations, eligibility for government
29 assistance programs, and the effect that losing equity in the home
30 will have on the borrower's estate and heirs.

31 (G) The ability of the borrower to finance alternative living
32 accommodations, such as assisted living or long-term care nursing
33 home residency, after the borrower's equity is depleted.

34 (2) The checklist required in paragraph (1) shall be signed by
35 the agency counselor and by the prospective borrower and returned
36 to the lender along with the certification of counseling required
37 under subdivision (k) of Section 1923.2, and the loan application

- 1 ~~shall not be approved until the signed checklist is provided to the~~
- 2 ~~lender. A copy of the checklist shall be provided to the borrower.~~